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10 Attorneys for Plaintiffs BIN XU, ON BEHALF
11 OF X-PLANET LLC; SHENZHEN FAMO
12 TECHNOLOGY CO., LTD.

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

BIN XU, individually and derivatively on
behalf of X-PLANET LLC, a Nevada
limited liability company; SHENZHEN
FAMO TECHNOLOGY CO., LTD, a
Chinese company,

Plaintiff,

v.

TMD SHOPS LLC, a California limited
liability company; YUAN ZHOU, an
individual; XIAOYU LI, an individual;
and DOES 1-25, inclusive,

Defendants,

-and-

X-PLANET LLC, a Nevada limited
liability company.

Nominal Defendant

Case No.
Assigned for all purposes to:
Judge: Hon.

VERIFIED COMPLAINT FOR:

- (1) **CONVERSION
(DERIVATIVE);**
- (2) **BREACH OF FIDUCIARY
DUTIES (DIRECT);**
- (3) **BREACH OF FIDUCIARY
DUTIES (DERIVATIVE);**
- (4) **MEMBER'S RIGHT OF
INSPECTION &
ACCOUNTING (DIRECT);**
- (5) **FRAUD – INTENTIONAL
MISREPRESENTATIONS
(DIRECT);**
- (6) **FRAUD – NEGLIGENT
MISREPRESENTATIONS
(DIRECT);**
- (7) **COMMON LAW
TRADEMARK
INFRINGEMENT;**
- (8) **DECLARATORY RELIEF;**
- (9) **ACCOUNTING
(DERIVATIVE).**

DEMAND FOR JURY TRIAL

1 Plaintiff BIN XU, individually and derivatively on behalf of defendant X-
2 PLANET LLC, and FAMO TECHNOLOGY CO., LTD., allege and complain as
3 follows:

4 **NATURE OF THE ACTION**

5 1. This is a hybrid case featuring an individual's direct claims and
6 derivative claims seeking to hold those responsible for corporate malfeasance and
7 fraud. This case also consists of a company's right to enforce its common law
8 trademark rights and contract rights against the same individuals who have blatantly
9 ignore all aspects of law and order.

10 2. This action is not a collusive one to confer jurisdiction that the court
11 would otherwise lack.

12 **JURISDICTION AND VENUE**

13 3. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §
14 1332(a)(2) as there is a diversity of citizenship between the parties and the amount in
15 controversy exceeds \$75,000, exclusive of interest and costs.

16 4. The Court has personal jurisdiction over the defendants because the
17 events or omissions giving rise to the claim occurred, the tortious acts occurred,
18 and/or a substantial part of the injury took place and continues to take place, in this
19 judicial district and some of the defendants maintain a principal place of business in
20 this judicial district or are domiciled in this judicial district.

21 5. Venue is proper under 28 U.S.C. § 1391 as the underlying acts,
22 omissions, and events giving rise to the claims occurred within or were directed to this
23 district.

24 **THE PARTIES**

25 6. Bin Xu ("XU") is, and at all relevant times herein mentioned, is citizen of
26 China, residing in Shenzhen, China. XU is a member of defendant X-PLANET LLC
27 and holds a 36% membership interest therein.

28 7. Plaintiff SHENZHEN FAMO TECHNOLOGY CO., LTD ("FAMO") is,

1 and at all times mentioned was, a company organized and existing under the laws of
2 China, with its principal place of business in Shenzhen, China.

3 8. Nominal Defendant X-PLANET LLC¹ (“X-PLANET”) is, and at all
4 times mentioned was, a limited liability company organized and existing under the
5 laws of Nevada and registered as a foreign corporation in California, with its principal
6 place of business in San Dimas, California.

7 9. Plaintiff XU and FAMO (collectively “Plaintiffs”) are informed and
8 believe, and thereon allege, that Defendant Yuan Zhou (“ZHOU”) is a naturalized
9 United States citizen, domiciling in Alhambra, County of Los Angeles, California.
10 ZHOU is listed as the manager of X-PLANET pursuant to the California Secretary of
11 State.

12 10. Plaintiffs are informed and believe, and thereon allege, that Defendant
13 Xiaoyu Li (“LI”) is a naturalized United States citizen domiciling in Alhambra,
14 County of Los Angeles, California.

15 11. Plaintiffs are informed and believe, and thereon allege, that Defendant
16 TMD Shops LLC (“TMD”) is, and at all times mentioned was, a limited liability
17 company organized and existing under the laws of the State of California, with its
18 principal place of business in San Dimas, County of Los Angeles. ZHOU and LI are
19 members of TMD.

20 12. The true names and capacities, whether individual, corporate, associate,
21 or otherwise, of the defendants named herein as DOES 1 through 25 inclusive, are
22 unknown to Plaintiffs who therefore sue said defendants by such fictitious names
23 pursuant to the Code of Civil Procedure § 474. Plaintiff will amend this Complaint to
24 show their true names and capacities when the same have been ascertained.

25 13. Plaintiffs are informed and believe, and thereon allege that at all times

26 1 The citizenship of nominal and formal parties who have no interest in the suit is disregarded for purposes of
27 determining diversity [Navarro Sav. Ass’n v. Lee (1980) 446 US 458, 460–461, 100 S Ct 1779, 64 L Ed2d 425;
28 Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc. (9th Cir 2000) 204 F3d 867, 873]. A nominal or formal party
has neither an interest in the result of the suit nor an actual interest in or control over the subject matter of the litigation
[Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc. (9th Cir 2000) 204 F3d 867, 873].

1 relevant to this action each of the defendants, including DOES 1 through 25 inclusive,
2 were responsible in some manner for the acts and omissions alleged in this Complaint,
3 and that Plaintiffs' damages, both existing and prospective, are, were, and will be
4 proximately caused by the acts and omissions of the defendants, including DOES 1
5 through 25 inclusive.

6 14. Plaintiffs are informed and believe, and thereon allege that defendants,
7 and each of them, including DOES 1 through 25 inclusive, are and were at all relevant
8 times the agents, servants, employees, partners, joint venturers, subsidiaries, parent
9 corporations, sureties, and successors-in-interest of each of the remaining defendants,
10 and were acting within the course, scope, and purpose of such agency, employment,
11 partnership, joint venture, subsidiary-parent relationship, sureties, and succession with
12 the knowledge, consent, approval, and ratification of the remaining defendants, and
13 each of them.

14 15. Plaintiffs are informed and believe, and thereon allege that defendants,
15 and DOES 1 through 25, entered into a conspiracy to defraud Plaintiffs as set forth
16 herein and aided and abetted one another through substantial assistance and
17 encouragement. As co-conspirators, they are jointly and severally liable to the
18 Plaintiffs.

GENERAL ALLEGATIONS

FORMATION OF X-PLANET

21 16. XU is the general manager and majority equity holder of FAMO, a
22 Chinese company which engages in the design, research, development, manufacture,
23 sales and related services of certain nicotine delivery system products bearing the
24 mark VIBEZ (the “Products”). FAMO is the owner of a registered Chinese trademark
25 VIBEZ. FAMO is comprised of the following equity holder with an ownership stake:
26 XU, Jiarui Xu, Youwang Zhang, and Ru Xu.

27 17. In or around January 2019, ZHOU was first introduced to XU in Las
28 Vegas. In or about September 2020, ZHOU went to FAMO's factory located at

1 Shenzhen, China to meet with XU. During the meeting, XU and ZHOU discussed the
 2 possibility that FAMO to expand its market by distributing its Products into the
 3 United States. ZHOU orally represented to XU that he could help FAMO with
 4 distributing the Products into the United States as he has the requisite knowledge and
 5 experience from working at a company in the United States that distributes nicotine
 6 delivery system products. During the meeting, ZHOU also represented orally to XU that in order to
 7 register a company in the United States, the registered agent and shareholder must be
 8 a US citizen and a Chinese company could not be a direct owner. ZHOU represented
 9 to XU that he was indeed a U.S. citizen.

10 18. Due to ZHOU's representation to XU regarding his experience,
 11 knowledge and the citizenship requirement, XU agreed to enlist ZHOU's help to set
 12 up a distribution company for FAMO, to distribute the Products and help promote the
 13 VIBEZ brand.

14 19. Consequently, ZHOU formed X-PLANET as a Nevada limited liability
 15 company in November 2020. XU and ZHOU agreed that the initial investment to set
 16 up X-PLANET would be \$200,000.00. FAMO would invest \$176,000.00, and ZHOU
 17 would invest \$24,000.00. The full amount of investment fund was wired into X-
 18 PLANET's account. The four equity holders of FAMO, including XU, plus ZHOU,
 19 would all be members of X-PLANET and the shares would be allocated as follows:
 20 XU 36%, ZHOU 12%, Jiarui Xu 28.4%, Youwang Zhang 17%, and Ru Xu 6.6%.
 21 Accordingly, everyone except ZHOU, were equity holders of FAMO and the sole
 22 reason that ZHOU would have a membership interest was due to ZHOU's
 23 representation regarding the citizenship requirement and his U.S. citizenship. On or
 24 about April 13, 2021, ZHOU registered X-PLANET as a foreign limited liability
 25 company doing business in California as its principal place of business was indeed in
 26 California.
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THE PRODUCT

2 20. After X-PLANET's organization, X-PLANET started purchasing the
3 Products from FAMO. Pursuant to X-PLANET's agreement with FAMO, FAMO was
4 to be the exclusive and sole manufacturer for the Products. X-PLANET, would be the
5 exclusive distributor of FAMO's Products. Specifically, the arrangement between
6 FAMO and X-PLANET was that X-PLANET would send purchase orders to FAMO
7 and FAMO would manufacture for X-PLANET in accordance with the purchase
8 orders. The payment terms were supposed to be after the Product were shipped to the
9 United States. At times, ZHOU would orally request FAMO to supply the Products
10 without the submission of a purchase order. In conjunction with the above agreement,
11 XU agreed to allow X-PLANET to use the VIBEZ mark in conjunction with the sales
12 and distribution of the Products, as long as X-PLANET honored its obligations to
13 FAMO.

14 21. From December 2020 to February, 2022, X-PLANET sold Products in
15 the United States bearing the VIBEZ mark. During the same period, ZHOU, on
16 behalf of X-PLANET, ordered \$5,365,973.60 worth of Products from FAMO. The
17 last order made by ZHOU was around early February 2022, for about 60,000 units of
18 Products. To date, X-PLANET has paid FAMO only \$3,003,552.32, leaving a balance
19 of \$2,362,421.28.

20 22. From December 2020 to February 2022, ZHOU, as the only member of
21 X-PLANET in the United States who ran the day-to-day operations of X-PLANET.
22 Upon information and belief, and based thereon, Plaintiffs allege that X-PLANET
23 sold all of the Products FAMO shipped. Upon information and belief, and based
24 thereon, Plaintiffs allege that X-PLANET's profit margin for selling the Products was
25 at least 1.5 times the amount that FAMO charged X-PLANET. Despite selling all the
26 Products ordered for a hefty profit, there has been no distribution of profits
27 whatsoever from X-PLANET to its members. Moreover, despite repeated requests,
28 ZHOU has never provided an accounting or any financial report to its members.

1 23. Unbeknownst to Plaintiffs, on or about September 1, 2021, ZHOU and LI
2 formed TMD, a separate entity. Upon information and belief, ZHOU and LI created
3 TMD for the purpose of competing with X-PLANET. According to the Statement of
4 Information that TMD filed with the California Secretary of State, the type of business
5 for TMD is “Retail, wholesale of Tobacco product”. Upon information and belief,
6 Plaintiffs allege that ZHOU had converted and misappropriated all revenue belonging
7 to X-PLANET to either himself, Defendant LI, or ZHOU’s and LI’s separate company
8 TMD.

ZHOU'S UNILATERAL APPOINTMENT OF HIMSELF AS THE SOLE MANAGER OF X-PLANET

11 24. Before the formation of X-PLANET, all prospective members agreed that
12 X-PLANET would be managed by the managers. At the time of X-PLANET's
13 formation on about November 27, 2020, the four equity holders of FAMO, including
14 XU, were appointed as the managers of X-PLANET. ZHOU was appointed as the
15 agent of service of process of X-PLANET. These appointments were duly reflected on
16 the Nevada Secretary of State website.

17 25. On or about December 21, 2020, all members of X-PLANET added
18 ZHOU as a manager as well. This addition was duly reflected on the Nevada
19 Secretary of State website.

20 26. On or about March 5, 2021, without X-PLANET's members' consent,
21 meeting or approval, ZHOU unilaterally updated the information on the Nevada
22 Secretary of State, and listed himself as the sole manager of X-PLANET. The other
23 members have no knowledge of such action, and never authorized such action.

24 27. In addition, at the time before X-PLANET was organized, all five
25 prospective members agreed that ZHOU would prepare and maintain all the books and
26 records of X-PLANET at its principal office and make them available for inspection.
27 Furthermore, ZHOU was to hire an independent CPA to perform all bookkeeping and
28 prepare all the financial statements and reports on a regular basis. Thereafter, ZHOU

1 was supposed to share the financial reports with all of its members. However, despite
 2 repeated requests to do so, ZHOU has not provided any financial disclosures or
 3 reports to its members.

4 **XU'S DEMAND TO ZHOU**

5 28. In or about February 2022, XU discovered the existence of counterfeit
 6 products bearing the VIBEZ mark in U.S. market ("Counterfeit Products). Being the
 7 general manager of FAMO, XU was aware of the type of products X-PLANET
 8 ordered, thus XU confronted ZHOU regarding the Counterfeit Products. ZHOU's
 9 response was that he did not know about the Counterfeit Products and no such
 10 products exist in the U.S. market. XU then investigated and discovered that a Chinese
 11 factory based in Shenzhen was manufacturing the Counterfeit Products. XU again
 12 confronted ZHOU regarding the matter regarding where the Counterfeit Products
 13 come from, and ZHOU represented that such products were sold by others and not by
 14 him. XU then reported this matter to the Chinese authority, which then conducted an
 15 investigation and seized a portion of the Counterfeit Products while the products were
 16 still in China. Not surprisingly, after the Counterfeit Products were seized, ZHOU
 17 went completely dark and ceased all communications with XU.

18 29. ZHOU's disappearance confirmed XU's suspicions. XU later
 19 discovered that although X-PLANET stopped ordering the Products from FAMO, X-
 20 PLANET was continuing to sell products in the U.S. Notably, X-PLANET's website
 21 was still active and listed the products bearing the VIBEZ mark on its website for sale.
 22 ZHOU, being the only member residing in the United States, has sole control over the
 23 website. XU suspects that ZHOU continues to sell the Counterfeit Products on the
 24 website.

25 30. Due to the above-mentioned misconduct by ZHOU, XU decided to serve
 26 a demand letter to ZHOU as X-PLANET's manager hoping that ZHOU could address
 27 the allegations. Although XU does not believe that X-PLANET properly appointed
 28 ZHOU as the sole manager, as such action was never authorized by the remaining

members, based on the publicly available records, ZHOU is the sole manager of X-PLANET. On or about May 5, 2022, XU sent out a demand letter to ZHOU (“Demand”) via email, FedEx overnight mail, and WeChat message.

4 31. The Demand included requests for ZHOU to: (i) return the revenue from
5 selling the Products to X-PLANET; (ii) provide opportunity for the inspection of X-
6 PLANET's books and records; and (iii) request an investigation as to ZHOU's
7 conduct for self-dealing.

8 32. The Demand mandated a response by May 9, 2022, which came and went
9 without any response.

10 33. XU also requested that the remaining X-PLANET members act to
11 investigate or remove ZHOU as the manager of X-PLANET, however, thus far, no
12 other member has willing to take such action.

THE VIBEZ MARK

14 34. FAMO is the owner of the rights in the mark VIBEZ in connection with
15 the design, research, development, manufacture, sales and related services of nicotine
16 delivery system products, including United States Trademark Applications numbers
17 97401374 and 97401266, both filed on May 9, 2022, with the first use in anywhere at
18 least as early as December 28, 2020, and first use in commerce in the United States at
19 least as early as January 29, 2021.

20 35. FAMO obtained a Chinese registered trademark for the mark VIBEZ
21 relating to similar vaping devices. The Chinese trademark application was filed on
22 December 28, 2020, and registered on August 14, 2021.

23 36. FAMO has continuously used the VIBEZ mark in U.S. commerce in
24 connection with the Products since at least as early as January 29, 2021, and continues
25 to use the VIBEZ mark in the United States in connection with the Products. FAMO's
26 products are manufactured in China, transported into the United States for distribution
27 by through X-PLANET in the United States. FAMO has not licensed the use of the
28 VIBEZ mark to any other manufacturer.

37. At first, FAMO sold the Products bearing the VIBEZ mark through X-PLANET in early 2021 in the United States.

38. In or around January 14, 2021, ZHOU, through X-PLANET and authorization of XU and FAMO, filed an intent-to-use trademark application for a mark VIBEZ PWRD BY X PLANET (the “Alternate Mark”), application number 90465767 (the “767 Application”), with the United States Patent and Trademark Office in connection with electronic cigarettes (“Identified Goods”).

39. In or around early 2022, XU discovered that ZHOU was selling Counterfeit Products bearing the VIBEZ mark, XU and/or FAMO had no knowledge of said products, let alone authorized such products. FAMO is informed and believes, and thereon alleges that ZHOU was using TMD to sell the various Counterfeit Products bearing the VIBEZ mark. XU also learned that X-PLANET's website continued to actively sell unauthorized products for sale, given the fact that ZHOU stopped ordering the Products from FAMO. All products listed on X-PLANET's website bear the VIBEZ mark, but are Counterfeit Products. The products sold by TMD and currently being sold on the X-PLANET website were never authorized by FAMO or XU and were not manufactured by FAMO.

40. FAMO is informed and believes, and thereon alleges that the products sold on the X-PLANET and TMD from January to April 2022 are Counterfeit Products bearing the VIBEZ mark. Likewise, FAMO is informed and believes, and there on alleges that the Counterfeit Products are also sold by TMD throughout the United States, including in the Southern California region.

41. FAMO is informed and believes, and thereon alleges that ZHOU does not have any intent to resume the use of the Products manufactured by FAMO.

ALTER-EGO

42. Plaintiffs are informed and believe, and based thereon allege that ZHOU, LI, and DOES 1 through 25 are and at all relevant times herein were the owners, members, promoters, founders, managers, directors and officers for TMD. There

1 exists, and at all relevant times herein existed, a unity of interest between ZHOU, LI,
2 and TMD, such that any individuality and separateness between ZHOU, LI and DOES
3 1 through 25 has ceased, and TMD is the alter ego of ZHOU, LI, and DOES 1 through
4 25 as follows:

- 5 a. Plaintiffs allege that TMD is, and at all relevant times herein were, a
6 mere shell and sham, without capital, assets, stock or stockholders.
7 TMD was conceived, intended and used by ZHOU, LI, and DOES 1
8 through 25 as a device to avoid individual liability and for the purpose
9 of substituting financially insolvent business entities in the place of
10 ZHOU, LI, and DOES 1 through 25. At no time after TMD became
11 established was any membership interests authorized to be issued or
12 issued, nor has any permit for issuance of membership interests been
13 applied.
- 14 b. Plaintiffs allege that TMD is, and at all relevant times herein was, so
15 inadequately capitalized that, compared with the business to be done
16 TMD and the risks of loss attendant therein, their capitalization was
17 illusory or trifling.
- 18 c. Plaintiffs allege that TMD, at all relevant times herein was, the alter
19 ego of ZHOU, LI, and DOES 1 through 25 and there exists, and at all
20 times herein relevant has existed, a unity of ownership between
21 ZHOU, LI, and DOES 1 through 25 and TMD such that any
22 separateness has ceased to exist in that ZHOU, LI, and DOES 1
23 through 25 used the assets of TMD for personal uses, caused assets of
24 TMD to be transferred to them without adequate consideration, and
25 withdrew funds from TMD's bank accounts for their personal use.
- 26 d. Plaintiffs allege that TMD is, and at all relevant times herein was, a
27 mere shell, instrumentality and conduit through which ZHOU, LI, and
28 DOES 1 through 25 carried on their business in the name of TMD

exercising complete control and dominance of the businesses to such an extent that any individuality or separateness of TMD and ZHOU, LI, and DOEW 1 through 25 does not now, and at all relevant times herein did not, exist.

- e. Plaintiffs allege that TMD is, and at all relevant times herein was, controlled, dominated, and operated by ZHOU, LI, and DOES 1 through 25 as their individual business and alter ego, in that the activities of the business of TMD was carried out without holding members, directors or managers meetings, no records or minutes of any corporate proceedings were maintained, and ZHOU, LI, and DOES 1 through 25 entered into personal transactions with TMD, without the approval of any members, managers, directors, or officers.
 - f. Plaintiffs allege that adherence to the fiction that TMD has a separate existence as entities distinct from ZHOU, LI, and DOES 1 through 25 would permit an abuse of the corporate privilege by TMD and would sanction fraud in that ZHOU, LI, and DOES 1 through 25 caused funds to be invested with TMD without any consideration paid to ZHOU, LI, and DOES 1 through 25, all for the purpose of avoiding and preventing attachment and execution by creditors, including Plaintiffs.

FIRST CLAIM FOR RELIEF

(By XU, derivatively, for Conversion against ZHOU, LI AND TMD and DOES 1 through 25)

43. Plaintiffs repeat and reallege the contents of paragraphs 1 through 42 above as though set forth herein fully.

44. At all times relevant, X-PLANET has owned, possessed, or had a right to receive and possess its assets, including without limitation, the income or revenue generated from X-PLANET's sales.

1 45. XU has recently discovered that ZHOU has intentionally and
2 substantially interfered with X-PLANET's property by means of false and fraudulent
3 activity, including, but not limited to, misappropriating X-PLANET's corporate funds
4 for his own personal expenses and/or the expenses of his separate businesses and
5 business partner, namely TMD and LI, respectively, and other corporate theft
6 according to proof. ZHOU engaged in this conduct with the intention of wrongfully
7 benefitting himself at the expense of X-PLANET.

8 ||| 46. Neither XU nor X-PLANET consented to said activities.

9 47. As a direct and proximate result of the foregoing acts, ZHOU intended to
10 cause, and has in fact caused, actual harm to X-PLANET, and is liable to X-PLANET
11 for damages in an amount to be proven at trial.

12 48. During, and as a further proximate result of, ZHOU, LI, TMD's wrongful
13 possession and detention of X-PLANET's property, X-PLANET has suffered the loss
14 of the deterioration of its property and resulting business losses in an amount to be
15 proven at trial.

16 49. Furthermore, XU is informed and believes, and so alleges, that ZHOU,
17 LI and TMD's aforementioned acts were taken with malice, fraud, and oppression and
18 in conscious disregard for X-PLANET's rights, and were done willfully and with the
19 intent to cause injury to X-PLANET. Plaintiffs are informed and believe, and thereon
20 allege that ZHOU, LI and TMD intended to surreptitiously misappropriate X-
21 PLANET's corporate funds for their own personal use, seeking only to intentionally
22 and maliciously deceive X-PLANET. Accordingly, X-PLANET is entitled to an
23 award of exemplary and punitive damages against ZHOU, LI and TMD.

SECOND CLAIM FOR RELIEF

25 (By XU, individually, for Breach of Fiduciary Duty against ZHOU and DOES 1
26 through 25)

27 50. Plaintiffs repeat and reallege the contents of paragraphs 1 through 49
28 above as though set forth herein fully.

1 51. At all times relevant, ZHOU as a manager of X-PLANET, owns
2 fiduciary duties to XU, a member of X-PLANET. ZHOU has been managing X-
3 PLANET's day-to-day operations since X-PLANET's formation, and ZHOU has been
4 a manager of X-PLANET since December 2020.

5 52. ZHOU's duties to XU include, among other things, (i) to act only in the
6 best interest of X-PLANET's members, to protect the interests of X-PLANET's
7 members, (ii) to refrain from engaging in grossly negligent or reckless conduct,
8 intentional misconduct, or a knowing violation of law, (iii) to discharge his duties to
9 X-PLANET's members and exercise any rights consistently with the obligation of
10 good faith and fair dealing, and (iv) to refrain from doing anything that would injure
11 X-PLANET's members.

12 53. ZHOU breached his fiduciary duty to XU by doing, or failing to do, the
13 things alleged above, including, but not limited to: (i) refusing to allow the inspection
14 of X-PLANET's books and records by XU, despite having sole possession, custody,
15 and control over such records and despite XU being fully authorized by applicable law
16 to have such an inspection performed, (ii) depriving XU's rights and economic
17 advantages as a member of X-PLANET, (iii) converting X-PLANET's assets
18 including the revenue generated from the sale of the Products, and (iv) forming a
19 competing business TMD with LI.

20 54. As a direct and proximate result of the foregoing acts, ZHOU intended to
21 cause, and has in fact caused, actual harm to XU, and is liable to Plaintiff for damages
22 in an amount to be proven at trial.

23 55. Furthermore, XU is informed and believes, and thereon alleges, that
24 ZHOU's aforementioned acts were taken with malice, fraud, and oppression and in
25 conscious disregard of XU's rights, and were done willfully and with the intent to
26 cause injury to XU. Accordingly, XU is entitled to an award of exemplary and
27 punitive damages against ZHOU.

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THIRD CLAIM FOR RELIEF
**(By XU, derivatively, for Breach of Fiduciary Duty against ZHOU and DOES 1
through 25)**

56. Plaintiffs repeat and realleges the content of paragraphs 1 through 55 above as though set forth herein fully.

57. At all times relevant, ZHOU owed fiduciary duties to X-PLANET as a manager of X-PLANET.

58. This duty to X-PLANET includes, among other things, (i) to act only in the best interest of X-PLANET, to protect the interests of X-PLANET, (ii) to refrain from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law, (iii) to discharge his duties to X-PLANET and exercise any rights consistently with the obligation of good faith and fair dealing, and (iv) to refrain from doing anything that would injure X-PLANET.

59. ZHOU breached his fiduciary duty to X-PLANET by doing, or failing to do, the things alleged above, including, but not limited to converting the income or revenue from X-PLANET's sales to his separate businesses and by forming TMD, a competing business with LI.

60. As a direct and proximate result of the foregoing acts, ZHOU intended to cause, and has in fact caused, actual harm to X-PLANET, and is liable to X-PLANET for damages in an amount to be proven at trial.

61. Furthermore, Plaintiffs are informed and believe, and thereon allege, that ZHOU's aforementioned acts were taken with malice, fraud, and oppression and in conscious disregard of X-PLANET's rights, and were done willfully and with the intent to cause injury to X-PLANET. Accordingly, X-PLANET is entitled to an award of exemplary and punitive damages against ZHOU.

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FOURTH CLAIM FOR RELIEF

**(By XU, directly, XU's Right of Inspection & Accounting against ZHOU and
DOES 1 through 25)**

62. Plaintiffs repeat and reallege the contents of paragraphs 1 through 61 above as though set forth herein fully.

63. ZHOU, as a manager of X-PLANET and the sole person who has been managing X-PLANET's day-to-day operations, caused X-PLANET selling \$5,365,973.60 worth of Products in the United States, and is in the sole control of all of X-PLANET's accounts, books, and records.

64. A member's right to inspect a limited liability company's books is necessary and proper for the protection of the member's interest. A member's right to inspect the limited liability company's accounts, books, records and meeting minutes, and numerous other corporate records are warranted by law.

65. As alleged above, ZHOU has rebuffed and refused every one of XU's multiple attempts to arrange for an inspection and accounting of X-PLANET's corporate records.

66. As alleged above, the income or revenue from X-PLANET's sales cannot be ascertained without an inspection and accounting, the means of which are within the knowledge of ZHOU. An inspection and accounting are also necessary in order to properly determine XU's economic rights and interests as well as to determine the extent of ZHOU's fraud, mismanagement, and the extent of the injury thereby caused to XU and X-PLANET.

67. As such, XU and X-PLANET is entitled to an inspection of X-PLANET's corporate records and an accounting of all financial activities, conduct, information relative to the affairs of X-PLANET.

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FIFTH CLAIM FOR RELIEF

**(By XU, individually, for Fraud – Intentional Misrepresentation against ZHOU
and DOES 1 through 25)**

68. Plaintiffs repeat and reallege the contents of paragraphs 1 through 67 above as though set forth herein fully.

69. In or about January 2019, in Las Vegas, Nevada, ZHOU represented orally to XU that he would be able to help Plaintiff to distribute the Products into the United States. ZHOU further represented to XU that he had the requisite knowledge and experience as he was working at a company in the United States that distributes nicotine delivery system products.

70. In or about March, 2020, at FAMO's factory located at Shenzhen, China, ZHOU represented orally to XU that in order to distribute the Product in the United States, FAMO needed to register a company in United States. ZHOU further represented orally to XU that in order to register a company in the United States, the registered agent and owner must be a U.S. citizen and that a Chinese company could not having direct ownership of a U.S. company. ZHOU represented to XU that he was indeed a US citizen.

71. The representations made by ZHOU with respect to an owner must be a U.S. citizen and that a Chinese company cannot not have direct ownership interest in a U.S. company are false.

72. ZHOU made the false representations knowing them to be false. The representations made by ZHOU were material, and XU would have acted differently had ZHOU not made the false representations.

73. ZHOU made the false representations with the intent to induce XU to include ZHOU as a shareholder or member of the United States company to distribute the Products into the United States. ZHOU's false representations did in fact induce XU to include ZHOU as a member of X-PLANET, which financially benefitted ZHOU.

74. XU had a right to rely on ZHOU's representations, acted in reasonable reliance on these representations, and in ignorance of their falsity, included ZHOU as a member of X-PLANET. Had XU known the true facts, XU would not have included ZHOU as a member of X-PLANET.

75. As a direct and proximate result of the foregoing acts, ZHOU intended to cause, and have in fact caused, actual harm to XU, and is liable to XU for damages in an amount to be proven at trial.

76. Furthermore, XU is informed and believes, and thereon alleges, that ZHOU's aforementioned acts were taken with malice, fraud, and oppression and in conscious disregard for XU's rights, and were done willfully and with the intent to cause injury to XU. Accordingly, XU is entitled to an award of exemplary and punitive damages against ZHOU.

SIXTH CLAIM FOR RELIEF

**(By XU, individually, for Fraud – Negligent Misrepresentations against ZHOU
and DOES 1 through 25)**

77. Plaintiffs repeat and reallege the contents of paragraphs 1 through 76 above as though set forth herein fully.

78. In or about January 2019, in Las Vegas, Nevada, ZHOU represented orally to XU that he would be able to help Plaintiff to distribute the Product into the United States. ZHOU further represented to XU that he had the requisite knowledge and experience as he was working at a company in the United States that distributes nicotine delivery system products.

79. In or about March, 2020, at FAMO's factory located at Shenzhen, China, ZHOU represented orally to XU that in order to distribute the Product in the United States, FAMO needed to register a company in United States. ZHOU further represented orally to XU that in order to register a company in the United States, the registered agent and shareholder must be a U.S. citizen. ZHOU represented to XU that he was indeed a US citizen.

80. The representations made by ZHOU with respect to a shareholder must be a U.S. citizen is false.

81. ZHOU made the false representations knowing them to be false. The representations made by ZHOU were material, and XU would have acted differently had ZHOU not made the false representations.

82. ZHOU made the false representations with the intent to induce XU to include ZHOU as a shareholder or member of the United States company to distribute the Product into the United States. ZHOU's false representations did in fact induce XU to include ZHOU as a member of X-PLANET, which financially benefitted ZHOU.

83. XU had a right to rely on ZHOU's representations, acted in reasonable reliance on these representations, and in ignorance of their falsity, included ZHOU as a member of X-PLANET. Had XU known the true facts, XU would not have included ZHOU as a member of X-PLANET.

84. As a direct and proximate result of the foregoing acts, ZHOU intended to cause, and have in fact caused, actual harm to XU, and is liable to XU for damages in an amount to be proven at trial.

SEVENTH CLAIM FOR RELIEF

**(By FAMO for Common Law Trademark Infringement Against ZHOU, LI,
TMDand DOES 1 through 25)**

85. Plaintiffs repeat and reallege the contents of paragraphs 1 through 84 above as though set forth herein fully.

86. FAMO is the owner of the VIBEZ mark. In January of 2021, FAMO began using the VIBEZ mark in relation to the Products, in the Southern California region, as well as, other areas in the United States. Many of FAMO's products were sold through X-PLANET'S website.

1 87. FAMO's limited license to X-PLANET to use the VIBEZ mark was
2 contingent upon X-PLANET's continue use of FAMO as its exclusive supplier of the
3 Products.

4 88. FAMO is informed and believes, and thereon alleges that in or around
5 late 2021, ZHOU began contracting with a third party Chinese company to
6 manufacture unauthorized and counterfeit products with the VIBEZ mark.

7 89. Subsequently, in early 2022, ZHOU began selling unauthorized and
8 counterfeit products featuring the VIBEZ marks through X-PLANET's and TMD
9 website. ZHOU also used TMD to sell Counterfeit Products directly through its own
10 stores. The Counterfeit Products were also sold in the Southern California and other
11 areas within the United States in which FAMO's Products were also sold.

12 90. As a result of FAMO's prior rights, in the nature of earlier use dates in
13 anywhere and the same use date in commerce in the United States of the VIBEZ mark,
14 and any potential use of the Alternate Mark is likely to cause confusion, mistake or
15 deception with respect to the source and origin of goods offered by FAMO and goods
16 offered by ZHOU under their respective marks, and confusion as to sponsorship,
17 affiliation or relation between FAMO and the Counterfeit Products sold by ZHOU.

18 91. If ZHOU is permitted to continue to use the VIBEZ or Alternate Mark,
19 despite the likelihood of confusion, FAMO's rights in and to its VIBEZ mark in
20 connection with the Products will be impaired and FAMO will be damaged.

21 92. FAMO is and will continue to be damaged by the continued registration
22 of the Alternate Mark as an obstacle to registration of FAMO's pending application
23 for the mark VIBEZ and future applications for related marks.

24 93. Accordingly, the '767 Application is void ab initio. Continued
25 registration of the Alternate Mark will impinge on FAMO's lawful right to adopt and
26 use its own VIBEZ mark, and prevent FAMO from obtaining federal registrations of
27 said mark and related marks.

28

94. The actions of ZHOU described above and including, without limitation, his knowledge, participation, and inducement of the unauthorized use of the VIBEZ mark on the Counterfeit Product, and confusingly similar variations thereof, in commerce to advertise, market, and allegedly sell the Counterfeit Products throughout the United States and California, constitute contributory trademark infringement in violation of the common law of the State of California.

95. The actions of ZHOU, if not enjoined, will continue. FAMO has suffered and continues to suffer damages in an amount to be proven at trial consisting of, among other things, diminution in the value of the goodwill associated with FAMO's VIBEZ mark, and injury to FAMO's business.

96. Furthermore, FAMO is informed and believes, and thereon alleges, that ZHOU's aforementioned acts were taken with malice, fraud, and oppression and in conscious disregard for FAMO's rights, and were done willfully and with the intent to cause injury to FAMO. Accordingly, FAMO is entitled to an award of exemplary and punitive damages against ZHOU in accordance to state common law.

EIGHTH CLAIM FOR RELIEF

(By XU, derivative, for Declaratory Relief against ZHOU and DOES 1 through 25)

97. Plaintiffs repeat and reallege the contents of paragraphs 1 through 96 above as though set forth herein fully.

98. An actual and current controversy has arisen and now exists between XU, on the one hand, and ZHOU, on the other hand, concerning who is the manager of X-PLANET.

99. XU contends that ZHOU's unilateral listing of himself as the sole manager on the Nevada Secretary of State was without any consent, meeting, authorization or approval by any other members of X-PLANET.

1 100. XU, on behalf of X-PLANET, seeks a declaration of this Court that (i)
2 ZHOU's unilateral appointment on or about March 5, 2021 was void, (ii) ZHOU's
3 manager position to be removed from X-PLANET, (iii) any conduct or action taken
4 by ZHOU on behalf of X-PLANET is voidable, and (iv) XU will be appointed as the
5 new manager of X-PLANET.

6 101. XU is informed and believes, and thereon alleges, that ZHOU will
7 contend, in all respects, to the contrary.

8 102. A judicial declaration is necessary and appropriate at this time so that the
9 parties may act in conformity with their respective rights and obligations, and avoid a
10 multiplicity of actions.

NINTH CLAIM FOR RELIEF

(By XU, derivatively, for Accounting against ZHOU and DOES 1 through 25)

13 103. Plaintiffs repeat and reallege the contents of paragraphs 1 through 102
14 above as though set forth herein fully.

15 104. A relationship exists between X-PLANET and ZHOU in which the
16 relationship requires an accounting.

17 105. As alleged above, ZHOU ran the day-to-day operations of X-PLANET,
18 and X-PLANET sold all the Products FAMO shipped to X-PLANET. ZHOU has
19 never provided an accounting or any financial report to X-PLANET's members,
20 including XU. X-PLANET's financials cannot be ascertained without an accounting,
21 the means of which are within the sole knowledge of ZHOU.

22 106. As such, XU, on behalf of X-PLANET, is entitled to an accounting of all
23 financial activities, conduct, information relative to the affairs of X-PLANET.

PRAYER FOR RELIEF

25 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of
26 them, jointly and severally, as follows:

- 27 1. For compensatory damages in an amount to be proven at trial;
28 2. For special damages, in an amount to be proven at trial;

- 1 3. For expectation, consequential and incidental damages in an amount to
- 2 be proven at trial;
- 3 4. For prejudgment interest at the highest allowable legal rate;
- 4 5. For this Court to issue an Order granting XU full access to all of X-
- 5 PLANET's corporate records, documents, accounts and other records;
- 6 6. For attorneys' fees and costs of suit as allowed by statute or permitted by
- 7 law;
- 8 7. For punitive damages arising from ZHOU's intentional torts;
- 9 8. For a declaration that (i) the mark VIBEZ belongs to FAMO, (ii) the 767
- 10 Application, if it goes through successfully, will belong to FAMO;
- 11 9. For a declaration that (i) ZHOU's unilateral appointment on or about
- 12 March 5, 2021 was void, (ii) ZHOU's manager position to be removed
- 13 from X-PLANET, and (iii) XU will be appointed as the sole manager of
- 14 X-PLANET;
- 15 10. For such other relief as the Court may deem just and proper.

16
17
18 Dated: June 13, 2022

ARDENT LAW GROUP, P.C.

19
20 By: /s/ Hubert Kuo

21 Hubert H. Kuo

22 David Yu

23 Attorneys for Plaintiffs BIN XU,
24 individually and derivatively on
25 behalf of X-PLANET LLC, and
26 SHENZHEN FAMO
27 TECHNOLOGY CO., LTD.

VERIFICATION

I, Bin Xu, declare as follows:

1. I am a Plaintiff in the present case and a resident of the People's Republic of China. I am a member, officer, and have an ownership stake in Plaintiff X-Planet, LLC ("X-Planet"). I am also a member, officer, and have an ownership stake in Plaintiff Shenzhen Famo Technology Co., Ltd ("SFTC"). I am over the age of eighteen.
 2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing *Verified Complaint*, and if called on to testify I would competently testify as to the matters stated herein.
 3. I have personal knowledge of X-Planet and SFTC, their activities, and their intentions, including those set out in the foregoing *Verified Complaint*, and if called on to testify I would competently testify as to the matter stated herein.
 4. I declare under penalty of perjury under the laws of the United States of America that the foregoing statements of the *Verified Complaint* are true and correct.

Executed on June 13, 2022, at Los Angeles, California

Bin Xu